

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 04-36
IP-Enabled Services)	



REPLY COMMENTS

I. Introduction

The members of the American Cable Association (“ACA”) are uniquely positioned to provide new IP-enabled services like VoIP to underserved small markets – they already provide a broadband “last mile” to millions of smaller market and rural homes.¹

To facilitate this progress, the Commission must proceed with care when promulgating regulations and policies that will affect independent cable companies’ provision of IP-enabled services to their customers. When it comes to cable regulation, one size does not fit all. Several hurdles to the provision of IP-enabled services disproportionately impact smaller cable operators:

- **Pole attachment rates.** Many smaller cable operators must attach to the poles of telephone and electric cooperatives. These cooperatives are not subject to the Pole Attachment Act’s requirement that pole attachment rates be just and reasonable. Increasingly, ACA members report that these coops are demanding unreasonable attachment rates – in some

¹ See *Ex Parte Presentation of the American Cable Association* (June 4, 2004) in *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996; Notice of Inquiry*, GN Docket No. 04-54, which we incorporate by reference in these Reply Comments.

cases four or five times the rates charged by regulated utilities in the same market. Excessive attachment rates will chill smaller operators' deployment of IP-enabled services in these markets.

- **Interconnection.** Many small markets are served by rural telephone companies, which generally are not subject to the interconnection obligations in 47 U.S.C. § 251.
- **Administrative and operational burdens.** ACA's members, many of which have limited resources for administrative and operational tasks, would be severely challenged by the significant administrative obligations imposed on telecommunications carriers. Telecommunications-type operational obligations like back-up power requirements and complex billing requirements would provide further obstacles to ACA members seeking to roll out VoIP services.

Congress and the Commission must address these hurdles or risk slowing or stalling the progress that ACA's members are making toward deploying IP-enabled services in the markets where it is most needed.

In addition, ACA supports commenters advocating exclusive FCC jurisdiction over IP-enabled services like VoIP, and commenters that oppose classifying IP-enabled services as cable services.

The American Cable Association. ACA represents nearly 1,100 independent cable companies that serve about 8 million cable subscribers, primarily in smaller markets and rural areas. ACA members range from small, family-run cable systems to multiple system operators focusing on smaller markets. About half of ACA's members serve fewer than 1,000 subscribers. All ACA members face the special challenges of building, operating and upgrading broadband networks in lower density, higher cost markets.

II. Small cable successes and plans for deploying IP-enabled services, and small cable obstacles to providing IP-enabled services

A. Successes and plans for deployment

A number of ACA's members already provide VoIP services to smaller and rural markets. Many others are considering doing so. ACA interviewed a number of its independent cable company members about their deployment of VoIP or plans to deploy VoIP to smaller rural areas. Some examples follow:

1. Tele-Media. Tele-Media is headquartered in Pleasant Gap, PA. The company serves about 50,000 subscribers from 11 systems in Connecticut, Florida, Kentucky, Indiana, Massachusetts, Michigan, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. Tele-Media has already deployed VoIP services in Colonial Heights, VA (pop. 17,000), Petersburg, VA (pop. 34,000), and Prince George County, VA (pop. 33,000). The company is currently testing VoIP services in its 1,100-subscriber system in Zion, PA, and intends to deploy the services there very shortly.

2. NewWave Communications. NewWave is located in Sikeston, Missouri, and serves about 20,000 subscribers in Arkansas, Kentucky, Missouri, South Carolina and Tennessee from 13 small cable systems. It acquired these systems in September 2003 and immediately began an aggressive interconnection and upgrade project to provide broadband and advanced services to its rural subscribers. In conjunction with this project, NewWave is teaming with a local telephone company to launch VoIP services in markets such as Essex, MO (pop. 545), Campbell, MO (pop. 1,883) and Fulton, KY (pop. 2,775), by the end of this summer.

3. Carson Communications. Carson Communications is located in Wetmore, Kansas. It serves about 4,500 subscribers from 22 headends, most of which

serve fewer than 50 subscribers each. Despite the small size of its systems, Carson currently makes broadband service available to more than 89% of its rural subscriber base.

In response to specific requests from rural subscribers underserved by local telecommunications providers, Carson is currently testing VoIP services and will deploy these services in 2Q or 3Q 2004. All of Carson's subscribers with access to the company's broadband services will also have access to Carson's VoIP services, including subscribers in towns as small as Highland, KS (pop. 932), and Hiawatha, KS (pop. 3,417).

These stories provide a guidepost for other ACA members. To permit VoIP deployment to continue, however, the Commission's rules must take into account the very real issues that ACA's members face in implementing IP-enabled services. In the section below, ACA summarizes the concerns expressed by members about deploying IP-enabled services.

B. Obstacles to smaller cable operators providing IP-enabled services

ACA interviewed a number of its members about their plans to deploy IP-enabled services. Almost all respondents expressed the same set of concerns – pole attachment rates, interconnection, and administrative and operational burdens. As explained below, pole attachment rates and interconnection disproportionately impact smaller, independent operators because these operators tend to provide services in rural areas. Limited financial and personnel resources mean that administrative and operational requirements weigh more heavily on smaller operators.

1. Pole attachment rates

When ACA asked its members to name the greatest obstacles facing small cable operators providing VoIP services, pole attachment rates were cited by every respondent. Pole attachment rates are a “double whammy” for smaller operators: Smaller operators often must attach to cooperatives’ poles, which are not subject to rate regulation under the Pole Attachment Act,² and smaller operators’ lower subscriber densities mean higher pole costs. The regulatory classification of IP-related services will also affect attachment rates.

Cooperatives. The majority of ACA’s members serve small towns and rural areas, where they often must attach to telephone and electric cooperatives’ poles. Cooperatively organized entities are not subject to the Pole Attachment Act and do not need to provide attachments on just and reasonable rates, terms and conditions. Increasingly, ACA members encounter cooperatives that abuse their market power over essential facilities and demand unreasonable attachment rates.

Frank Vicente, Senior Vice President for Operations and Assistant Secretary of Tele-Media, reports that the attachment rates the company pays cooperatives have been increasing rapidly since Tele-Media began doing fiber rebuilds and deploying Internet and VoIP services. The cooperatives’ escalating rates are a strong disincentive to investing in VoIP services in Tele-Media’s small cable systems. Vicente states that “[deploying VoIP services in small systems] is the right thing to do...but we can’t go broke doing it.”³

² See 47 U.S.C. § 224(a)(1).

³ Telephone interview with Frank Vicente, president of Tele-Media Corporation of Delaware, June 25, 2004.

Low subscriber density. Cooperatives' rates aside, pole attachment costs consume a much greater portion of smaller operators' gross revenue. Subscriber density is much lower for systems with fewer than 15,000 subscribers.⁴ The greater distance between smaller operators' subscribers means that significantly more pole attachments are needed per rural subscriber than per urban subscriber, raising attachment costs for smaller operators even further.

Regulatory classification. If VoIP services are classified as "telecommunications services" and are made subject to the telecommunications attachment rate, smaller operators will face an even higher hurdle to providing VoIP services. Worse, the rate differential will be magnified for smaller operators because of their lower subscriber density. As one ACA member stated: "[This] will kill cable companies. This will prevent [VoIP] roll-out."⁵

Further, the telecommunications attachment rate is inappropriate for VoIP services provided by cable operators. VoIP services will be provided using the very facilities over which operators provide cable services and will impose no additional burden on the underlying pole owners' facilities. No reason exists to subject VoIP services to the higher telecommunications rate.

In summary, Congress and the Commission must address pole attachment rates for smaller operators, or risk stifling deployment of IP-enabled services.

⁴ See *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995) ("Small System Order") at § 27, finding that subscriber density for systems with fewer than 15,000 subscribers averages 35.3 subscribers per mile, versus 68.7 subscribers per mile for systems with more than 15,000 subscribers.

⁵ Telephone interview with Jim Gleason, President, Telecommunications Management, LLC d/b/a NewWave Communications, June 18, 2004.

2. Interconnection

Interconnection was the second major concern cited by every respondent interviewed. Without interconnection, cable operators will be unable to provide local numbers and may be unable to provide E911 services.

Moreover, a call to a next-door neighbor could be subject to access charges: If a cable operator cannot interconnect with the local telco, it will have to interconnect with a third-party provider (even this option is unavailable in a significant number of rural areas). A subscriber's local VoIP calls would be routed to the provider's gateway at a remote location, where they would be transferred to the public switched telephone network. The call would then be transported to the dialed number. The local telco would charge termination charges to complete the call.

Even if Congress and the Commission extend interconnection and other Title II obligations to VoIP services, rural telephone companies are generally exempt from the duty to provide interconnection under 47 U.S.C. § 251(c)(2).⁶ Because smaller cable operators commonly serve rural areas, the interconnection problem looms larger for these operators than for major MSOs.

Congress and the Commission must ensure that cable operators in rural areas have the right to interconnect to rural telephone company facilities. Without this right, many cable operators will be unable to provide VoIP services to their small town and rural subscribers.

⁶ See 47 U.S.C. § 251(f)(1)(A).

3. Administrative and operational burdens

The recordkeeping and reporting burdens attendant to providing voice services are significant. Administrative tasks place disproportionate burdens and costs on small cable systems and may prevent some operators from deploying VoIP services in these systems.

Congress and the Commission have consistently expressed special concern for the ability of smaller cable systems to bear the costs and burdens of administrative obligations. The 1992 Cable Act and the 1996 Telecommunications Act both contain Congress' express recognition of this public interest through inclusion of specific small cable provisions.⁷ Moreover, in dozens of recent orders granting waivers of its EAS requirements, the Commission has acknowledged the financial hardship faced by small cable systems.⁸

ACA recommends that Congress and Commission reduce administrative burdens on cable systems with fewer than 15,000 subscribers⁹ by providing streamlined

⁷ 47 U.S.C. § 543(i) ("In developing and prescribing regulations pursuant to this section, the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers."); Section 301(c) 1996 Telecommunications Act (providing greater deregulation for small systems), codified at 47 U.S.C. § 543(m).

⁸ See, e.g., *Big Sandy Telecom, Inc., Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-094, DA 02-1328 (rel. June 21, 2002); *Lovell Cable TV, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-100, DA 02-1753 (rel. July 30, 2002); *Panora Cooperative Cable Association; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-155, DA 02-1333 (rel. June 21, 2002); *Souris River Television, Inc.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-090, DA 02-1275, (rel. May 31, 2002); *WMW Cable Television Co.; Request for Waiver of Section 11.11(a) of the Commission's Rules*, File No. EB-02-TS-068, DA 02-1277, (rel. May 31, 2002).

⁹ The Commission has determined that small systems with fewer than 15,000 subscribers "do not have access to the financial resources, purchasing discounts, and other efficiencies of larger companies." *Small System Order* at § 28.

recordkeeping and reporting requirements for these systems, and by allowing the companies owning these systems to apply for waivers from administrative requirements.

For the reasons above, ACA further recommends that Congress and the Commission carefully consider any operational burdens – like backup power and complex billing and accounting requirements – before mandating them for IP-enabled services, and that the regulatory scheme provide for a waiver process for these requirements.

IV. FCC jurisdiction, regulatory classification of VoIP, light regulation

ACA supports those commenters that advocate exclusive federal jurisdiction over VoIP.¹⁰ State regulation would result in a patchwork of conflicting regulation that would discourage many smaller operators from rolling out VoIP services. Further, ACA supports those commenters opposing classification of IP-enabled services as cable services.¹¹ Finally, ACA supports those commenters advocating a light regulatory touch to allow this important new technology to develop.¹²

V. Solutions

ACA and its members support Congress and the Commission's goal of encouraging deployment of IP-enabled services to all Americans, and respectfully propose that Congress and the Commission facilitate the deployment by mandating the following in their legislation and rules:

¹⁰ See, e.g., *Comments of Cox Communications, Inc.* at 17-20; *Comments of Net2Phone, Inc.* at 12-19; *Comments of Vonage Holdings, Corp.* at 14-23.

¹¹ See, e.g., *Comments of Time Warner* at 17.

¹² See, e.g., *Comments of Cablevision Systems Corp.* at 2-3 and 8-9; *Comments of Vonage* at 6.

- Cooperative entities must provide pole attachments to cable operators on just and reasonable terms;
- The cable pole attachment rate is applicable to IP-enabled services;
- Rural telephone companies must interconnect with cable operators on just and reasonable terms;
- Streamlined recordkeeping and reporting requirements for small cable systems;
- A waiver process for burdensome administrative and operational requirements for small systems.

Each of these actions, in combination or alone, would help to ensure that millions of rural and smaller market customers will have access to IP-enabled services.

VI. CONCLUSION

Small cable is working hard to deploy IP-enabled services, but faces obstacles that disproportionately impact small systems and their smaller-market subscribers. Congress and the Commission must therefore proceed with caution. If these issues are not effectively addressed in the IP legislation and rules, millions of smaller-market customers could be left behind in the progress toward IP-enabled services.

Respectfully submitted,
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